

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

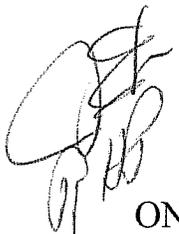
2007 CA 0446

EAGLE SERVICES CORPORATION

VERSUS

KAREN T. GUERIN

DATE OF JUDGMENT: November 2, 2007

 ON APPEAL FROM THE NINETEENTH JUDICIAL DISTRICT COURT
(NUMBER 517695, DIV. N(27)), PARISH OF EAST BATON ROUGE
STATE OF LOUISIANA

HONORABLE DONALD R. JOHNSON, JUDGE

* * * * *

John Dale Powers
Douglas M. Chapoton
Baton Rouge, Louisiana

Counsel for Plaintiff/Appellee
Eagle Service Corporation

Garth J. Ridge
Baton Rouge, Louisiana

Counsel for Defendant/Appellant
Karen T. Guerin

* * * * *

BEFORE: PARRO, KUHN AND DOWNING, JJ.

Disposition: AFFIRMED.

Downing, J. concurs and assigns reasons.

KUHN, J.

Plaintiff-appellant, Karen Guerin, appeals the trial court's judgment in favor of Eagle Services Corporation (Eagle), the entity that claimed it had purchased her credit card account with Providian National Bank (Providian). On appeal, Guerin challenges the trial court's determinations: (1) that photocopies of the original contracts entered into between Guerin and Providian, statements of activity kept by that entity, and the bill of sale between Vision Nevada Inc., d/b/a Vision Management Services (Vision) and Eagle were properly admitted¹ in accordance with La. C.E. art. 803(6), under the exception to hearsay exclusion rule² for the records of regularly conducted business activity; (2) that the Providian business records were duly authenticated under La. C.E. art. 901; and (3) that Eagle owned her Providian account because the photocopy of the contract in which Providian sold her account to Eagle's vendor, Vision, was not admitted into evidence. Eagle has answered the appeal, seeking an award of expert fees for the appearance and testimonial preparation of Cynthia Rogers, whose expertise is in handwriting analysis.

The trial judge stated in his oral reasons for judgment:

The court was particularly interested in knowing the nature of ... the acquisition business so that I could make an adequate determination of whether ... the exhibits that were being offered met the reliability test under the business ... rule exception. ... I believe that they are [sufficient], based upon the nature of the business of acquisition of other accounts, otherwise it would be very, very difficult for any [acquirer] of an account to prove in court that they've acquired the account.

¹ Although Guerin urges Eagle failed to comply with the trial court's directives on admission of the original bill of sale and assignment between Eagle and Vision, the certified official minutes of October 6, 2006 demonstrate to the contrary.

² *See* La. C.E. art. 802.

Because Eagle Vice President, James N. Voss, clearly established the standard procedure for acquisition of accounts and testified that the Providian business records were obtained and maintained in accordance with that procedure, we find no abuse of discretion in the trial court's conclusion that the Providian New Account Acceptance card, the Visa and Mastercard Account Agreement, the statements on Guerin's account, and the bill of sale and assignment between Vision and Eagle were properly admitted under Article 803(6). And the record establishes that the photocopied business records of Providian were duly authenticated. *See Roger v. Dufrene*, 97-1946, pp. 12-13 (La. App. 4th Cir. 9/9/98), 718 So.2d 592, 599-00. Lastly, Mr. Voss's testimony supported the trial court's implicit finding that the Providian account had been acquired by Eagle. Thus, a reasonable factual basis exists even without the admission of the bill of sale between Providian and Vision.

Insofar as the trial court's exclusion of Rogers' testimony, we likewise find no abuse of discretion. While Eagle asserts that Rogers' testimony was incorrectly excluded since it constituted impeachment testimony, the record established no inconsistency by Guerin that warranted admission of the expert's testimony. Since Guerin did not deny that the signature on the New Account Acceptance card was hers, she did not testify inconsistently. Moreover, Guerin provided her signature on a piece of paper, which was admitted into evidence. The trial court was within its province as the trier of fact to determine, based on his examination of the two writings, whether the photocopy of the New Account Acceptance card contained Guerin's signature without reliance on expert testimony. Accordingly, Eagle is not entitled to an award for Rogers' expert fees, and the relief it seeks in its answer is denied.

For these reasons, the trial court's judgment is affirmed in accordance with La. URCA Rule 2-16.2A(2), (4), (5), (6), (7) and (8). Appeal costs are assessed against plaintiff-appellant, Karen Guerin.

AFFIRMED.

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DOWNING, J., concurs.

TRD
Fallon's, Trial Handbook for Louisiana Lawyers, sec. 24:14, says there are three ways of proving handwriting. Having a judge compare signatures and act as an expert is not listed. I do not believe La.C.E. art. 901B(3) makes a judge an expert witness in handwriting.